v .

EMORY G. SNELL, JR.

#### ORDER

This case came before the court today for hearing of the defendant's Motion for Written Discovery.

After argument by counsel, and on consideration, it is ORDERED that the Commonwealth, and all persons or entities in possession or control of the following items shall deliver them forthwith to Irving Marmer, attorney for the defendant, for inspection and copying.

- 1. All autopsy notes, records and reports; the entire gross anatomic examination, chemical, chromatic, microscopic and serological measurements, readings and studies undertaken or completed that are ancillary to, or in clarification of the conclusions, exclusions or in support of the Commonwealth's medical examiner's trial testimony during the month of August, 1995.
- The common, generic or trade names of all medications, over-thecounter remedies and nutritional substances ingested, inhaled, or in apparent use by Elizabeth Lee Snell, late of 1051 Old Putnam Avenue, Marstons Mills, Massachusetts.
- 3. All medical records relating directly or indirectly to the care, diagnosis and treatment of Elizabeth Lee Snell from January 1, 1993, to and including March 18, 1995.
- 4. Transcripts of all oral communications to, from or by Elizabeth Lee Snell within the 48 hour intervals before and after March 16 and 18, 1995.
- 5. All written communications to, from or by Elizabeth Lee Snell during the period beginning January 1, 1995, to March 18, 1995.

/s/ Richard F. Connon Associate Justice Superior Court

## COMMONWEALTH

V.

## EMORY G. SNELL, JR.

# DEFENDANT'S MOTION FOR ENLARGEMENT OF 2005 DISCOVERY ORDER TO INCLUDE PERSONNEL FILE

Defendant Emory Snell, by and through undersigned counsel, hereby moves this Honorable Court to enter an order directing the Office of the Chief Medical Examiner ("OCME") to provide him with the personnel file of Dr. William Zane ("Dr. Zane"). In 1995, a jury convicted Mr. Snell of the crime of First Degree Murder. Commonwealth v. Snell, 428 Mass. 766 (1999). The Commonwealth alleged that Mr. Snell asphyxiated his wife, Elizabeth, on March 17, 1995. In a case with no percipient witnesses and no physical evidence linking Mr. Snell to the crime, the Commonwealth obtained a conviction based almost entirely upon the testimony of Dr. Zane.

Since Mr. Snell's trial, the Court (Connon, J.), in 2005, issued a discovery order directing the disclosure of information held in the possession, custody and control of the OCME. As a direct result of this Court's 2005 discovery order, new evidence has surfaced revealing that the Commonwealth's testifying medical examiner, Dr. William Zane, failed to conduct even the most minimally competent autopsy. Perhaps most strikingly, Dr. Zane, who the OCME subsequently

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COMMONMEALTH

EMORY SNELL. By his attorneys,

Gary B. Pelletier, BBO#631732

PELETIER CLARKE & CALEY

35 Youro Street

Newport, Rhode Island 02840

Tel: (401) 849-4400 Fax: (401) 849-8444

Email: gpelletier@pcclaw.net

## Certificate of Service

I, Gary G. Pelletier, hereby certify that on September 12, 2012, I served a true and correct copy of the within motion, attached exhibits and affidavit upon counsel for the Commonwealth of Massachusetts, Julia Holler, Esq., by hand delivery at the Office of the Cape & Islands District Attorney's Office, 3231 Main Street, Barnstable, Massachusetts.

Gary A. Pelletier, BBO#631732
35 Touro Street

SOUPERDENCE.

Respectfully submitted.

EMORY SUELL.

Dated: September 12, 2011

IND. NO. 1995-CR-46579

COMMONWEALTH	) COMMONWEALTH'S OPPOSITION	COMMONWEALTH'S OPPOSITION TO THE DEFENDANT'S MOTION FOR ENLARGEMENT OF DISCOVERY
v	) TO THE DEFENDANT'S MOTION ) FOR ENLARGEMENT OF DISCOVE	
EMORY SNELL	) ORDER	

Now comes the Commonwealth, through its District Attorney Michael D. O'Keefe, and respectfully opposes the defendant's motion for enlargement of the 2005 discovery order. As reasons therefore the Commonwealth states that this request is not an expansion of the 2005 order, but seeks information outside the custody and control of the Commonwealth and involves potentially privileged information that was not a part of the original trial. addition: (1) the defendant has not submitted an affidavit as required by the Mass.R.Crim.P. 30(c) (as appearing 435 Mass. 1501 (2001); (2) has not served the Office of the Chief Medical Examiner ("OCME") when it seeks records from OCME; (3) has not provided affidavits that make a prima facie case for relief as required by Mass.R.Crim.P. 30(c); and (4) by not making this claim at the earliest possible time, the defendant has waived presentation of this issue. The defendant is engaged in a fishing expedition to seek

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This court should consider the issue of waiver in full on this request for discovery. The defendant wishes to you through Zane's personnel records in order to potentially craft a third motion for a new trial, and a fourth attempt overall to overturn his conviction.

### CONCLUSION

For the foregoing reasons, the Commonwealth respectfully requests that this Honorable Court deny the detendant's Motion for Enlargement of 2005 Discovery Order to Include Personnel File.

Respectfully submitted,

Michael D. O'Keefe District Actorney BBD# 378145

Julia K. Holler

Andistant District Attorney

Cape and Islands District 32:1 Main Street P.O. Box 455 Harnstable, MA 02630 (508) 362 8113

metable 25, 2012